

Craig K. Pendergrast
(678)336-7245

Email: cpendergrast@taylorenghish.com

April 14, 2021

CERTIFIED MAIL NO.

7020 0090 0000 7109 4973

Daniel Communities, LLC
Daniel Communities Management
Corporation
High Hampton Resort, LLC
High Hampton Land, LLC
3115 Timberlake Road
Suite 100
Vestavia Hills, AL 35243

CERTIFIED MAIL NO.

7020 0090 0000 7109 4980

Daniel Communities, LLC
Daniel Communities Management
Corporation
High Hampton Resort, LLC
High Hampton Land, LLC
c/o Registered Agent
160 Mine Lake Court
Suite 200
Raleigh, NC 27615

CERTIFIED MAIL NO.

7020 0090 0000 7109 4997

United States Environmental Protection
Agency
Administrator
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

CERTIFIED MAIL NO.

7020 0090 0000 7109 5000

United States Environmental Protection
Agency
Region 4 Administrator
61 Forsyth Street SW
Atlanta, GA 30303

CERTIFIED MAIL NO.

7019 1640 0001 2736 5606

North Carolina Department of
Environmental Quality
Secretary
217 West Jones Street
Raleigh, NC 27603

CERTIFIED MAIL NO.

7019 1640 0001 2736 5613

G. Landon Davidson
Asheville Regional Office
North Carolina Department of Environmental
Quality
2090 U.S. 70 Highway
Swannanoa, NC 28778-8211

CERTIFIED MAIL NO.

7019 1640 0001 2736 5620

Tony Elders
Director, Office of Permitting and Code
Enforcement of Jackson County
538 Scotts Creek Road
Sylva, NC 28779

Re: 60 Day Notice of Intent to Sue and Demand Letter

Dear Sirs:

This law firm represents the Chattooga Conservancy and Craig and Nancy Probst.

The Chattooga Conservancy is a non-profit organization with approximately 600 members dedicated to the purpose of protecting the Chattooga River and its tributaries, including Fowler Creek. As you know, the Chattooga River is a federally-designated Wild and Scenic River and has been designated as an Outstanding Resource Water in North Carolina. Fowler Creek has been designated as a Class C+ Trout Water in North Carolina. These designations reflect the highly-valued and pristine nature of these streams under federal and state law.

Craig Probst owns property ("Probst Property") in the Whiteside Forest area of Jackson County, North Carolina. The Probst property includes a portion of Fowler Creek downstream of the High Hampton development on lands now or formerly owned by High Hampton Resort, LLC and High Hampton Land, LLC as part of a common plan of development in which Daniel Communities, Inc. and Daniel Communities Management Corporation (collectively, "High Hampton") have been involved. Mr. Probst and his wife Nancy Probst are frequent occupants of the Probst Property and place a high value on the historically pristine nature of Fowler Creek on it. Plain and simple, Fowler Creek at and in the vicinity of the Probst Property, the Whiteside Forest community, and the Chattooga River in the vicinity of and downstream of its confluence with Fowler Creek are special places.

Unfortunately, Fowler Creek and the Chattooga River downstream of the creek's confluence with it have been tainted over the past several years by pollution, including sediment, turbidity, and discoloration, of their waters as a result of major land disturbing activities at the High Hampton development. Those land disturbing activities have involved substantial earth moving and grading activities on sloping terrain in the upper watershed of Fowler Creek. Those activities have resulted in the discharge of pollutants into Fowler Creek's waters which have been carried downstream as far as the creek's confluence with the Chattooga River and beyond. The pollution has adversely impacted water clarity and trout habitat, with corresponding harm to aesthetics and trout population and propagation. The pollution of Fowler Creek and the Chattooga River which continues to exist as a result of discharges of impacted water from the High Hampton project represents a continuing violation of the federal Clean Water Act and applicable North Carolina law.

At present, although land disturbing activities associated with the redevelopment and expansion of the High Hampton golf course are near an end, the waters of Hampton Lake and

Jewel Lake at the High Hampton development remain polluted and serve as an ongoing source of pollution in Fowler Creek and the Chattooga, with turbidity and discoloration of those streams as a result of the High Hampton development increasing each time there is a significant rain event. The continuation of land disturbing activities at High Hampton in the months and years to come, including but not limited to additional road building and residential lot and home development, presents the likelihood of continuing and additional sediment-related pollution of Fowler Creek and the Chattooga River. As recently as last February 18, 2021, one of the sediment traps in the High Hampton development was overwhelmed which resulted in pollution of Fowler Creek downstream from the development.

Some of the sediment pollution caused by the High Hampton project has been detained in Fowler Creek where it is impounded by the Chattooga Club Lake ("CC Lake") downstream of High Hampton. Other sediment pollution from the High Hampton project continues to exist in Hampton Lake and Jewel Lake. Each of those lakes continues to be discolored as a result of the High Hampton project, and the water flowing from those lakes further downstream in Fowler Creek is similarly discolored. We also believe that unremediated sediment has come to rest in Fowler Creek between Jewel Lake and the head of CC Lake which constitutes a continuing pollution condition. High Hampton retains responsibility for all of that pollution and its ramifications.

We are aware that High Hampton has reached a settlement of some sort with the Chattooga Club, although we are unaware of its terms. We presume that High Hampton has paid the Chattooga Club some amount with the expectation that Chattooga Club will later dredge the High Hampton-caused sediment from the CC Lake. In the course of that dredging it is inevitable that High Hampton sediment will become waterborne and cause further pollution impact on Fowler Creek and the Chattooga River downstream of CC Lake for which High Hampton will be responsible. We do not know if High Hampton has plans to dredge sediment pollution that continues to exist in Hampton Lake and Jewel Lake on the High Hampton property, but its continued, unremediated existence constitutes a continuing pollution condition for which High Hampton has responsibility. In short, High Hampton has continuing responsibility for the existence of pollution in Fowler Creek, its impoundments, and the Chattooga River that results from the High Hampton project.

Land disturbing activities associated with High Hampton's common plan of development have been and continue to be subject to the terms of NPDES General Permit No. NCG010000 as issued by the North Carolina Department of Environmental Quality ("NCDEQ") pursuant to delegated authority under the federal Clean Water Act and the authority of the North Carolina Sedimentation Control Act and its regulations. These activities are also subject to the terms of the Jackson County Erosion and Sedimentation Code. In these regards, High Hampton has

responsibility not only for its own land disturbing activities, but also for the activities of third parties such as lot purchasers within the common plan of development. Each of these laws prohibits the discharge of sediments from the development into streams and off of the development site, and each provides for the removal of any sediments that are transported in such streams from the High Hampton development so as to restore the biological, physical, and chemical integrity of the impacted streams. Non-exclusive examples of these provisions are found at N.C. General Statutes § 113A-57(3), 15 NCAC 4B.0105, Condition 9 of the January 21, 2020 CWA Section 401 water quality certification issued by NCDEQ to High Hampton, and Section B.1 of the General Permit. These requirements have been violated and continue to be violated as a result of the High Hampton development.

High Hampton has responsibility for past and continuing violations of the General Permit and applicable North Carolina water quality standards, including but not limited to 15 NCAC 2B.0211(12), which relate to the subject matter of this letter. Those violations include violation of sediment, turbidity, and aesthetic discoloration standards, requirements applicable to the design and maintenance of erosion and sedimentation controls, encroachment into protected vegetated stream buffers, inspection requirements, and reporting requirements. As a result of additional investigation and/or discovery in potential litigation, we anticipate gaining additional information regarding such violations.

North Carolina common law also recognizes that the migration of sediment and stained water in a stream from one property such as the High Hampton development as a result of construction activities which victimizes a downstream property such as the Probst Property constitutes a violation of property rights. As a result, the Probsts' have common law claims against High Hampton, including but not limited to trespass and nuisance claims.

High Hampton has been cited numerous times by Jackson County and North Carolina regulatory staff for violations of the NPDES General Permit, the conditional CWA Section 401 Certification issued by NCDEQ in connection with the project, and CWA Section 404. These include but are not limited to violations as noted in the Jackson County Sedimentation Inspection Report dated May 20, 2020, NCDEQ's Notice of Violation letter dated May 27, 2020, NCDEQ's August 25, 2020 Notice of Violation letter, and the U.S. Army Corps of Engineer's September 23, 2020 email to High Hampton's environmental consultant at ClearWater Environmental Consultants as copied to High Hampton's Owen Schultz. As a result of these citations, High Hampton has been caused to undertake some corrective actions on its property. But to date, notwithstanding its knowledge that impacted waters from its project have resulted in pollution of Fowler Creek and the Chattooga River downstream of the project site, High Hampton has taken

Daniel Communities, LLC
United States Environmental Protection Agency
North Carolina Department of Environmental Quality
Office of Permitting Code and Enforcement of Jackson County
April 14, 2021
Page 5

no action to remedy that continuing downstream impact in violation of the federal Clean Water Act and state and local law, including North Carolina common law.

By reason of the continuing violations of the federal Clean Water Act described above as caused by High Hampton's land disturbing activities, please consider this letter to be a formal Notice of Intent to Sue High Hampton under the citizen suit provisions of the federal Clean

Water Act at 33 U.S.C § 1365. Please also consider this letter also to be a notice of intent to sue High Hampton pursuant to North Carolina common law and N.C. General Statutes § 143-215.6A. In such suit or suits, claims are anticipated for relief including injunctive relief, monetary relief, civil penalties, attorney's fees, and punitive damages in order to vindicate the rights and interests of the Chattooga Conservancy, the Probsts, and the public in Fowler Creek and the Chattooga River.

Nevertheless, consistent with the August 7, 2000 letter by Michael Corley on behalf of the Chattooga Conservancy to High Hampton and state and local officials to which High Hampton has failed to respond as requested, the Chattooga Conservancy and the Probsts are willing to discuss with High Hampton resolution of the problems which are the subject of this letter without the need for litigation. Should High Hampton have an interest in such discussions, please let me know promptly.

Sincerely,

Craig K. Pendergrast

Craig K. Pendergrast

cc: Jonathan Wells, Esq.

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April 19, 2021

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April 19, 2021

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April 15, 2021, 10:34 pm

Departed USPS Regional Facility

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April 15, 2021, 9:25 am

Arrived at USPS Regional Facility

BIRMINGHAM AL DISTRIBUTION CENTER

Case 1:21-cv-00239-MR-WCM Document 1-1 Filed 09/03/21 Page 6 of 11

https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70200090000071094973

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Postage \$
 Total Postage \$
 Sent To Daniel Communities, LLC
 Daniel Communities Management Corp.
 High Hampton Resort, LLC
 High Hampton Land, LLC
 Street and Ap 3115 Timberlake Road, Suite 100
 City, State, Zip Vestavia Hills, AL 35243

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Feedback

April 14, 2021, 10:49 pm

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✓ **Delivered, Left with Individual**

April 19, 2021 at 12:46 pm
RALEIGH, NC 27615

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<input type="checkbox"/> Return Receipt (hardcopy)	\$
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<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	
Total Postage	\$
Sent To: Daniel Communities, LLC Daniel Communities Management Corp. High Hampton Resort, LLC / High Hampton Land, LLC c/o Registered Agent Street and Apt. 160 Mine Lake Court, Suite 200 City, State, ZIP Raleigh, NC 27615	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

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here

MAHETTA, NC 27615
APR 19 2021
USPS
WINNY HILL BRANCH

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Postage

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Administrator

1200 Pennsylvania Avenue, N.W.

City, State, Washington, DC 20460

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Washington, DC 20460



9590 9402 6036 0069 1037 30

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A. Signature

X
☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

RECEIVED APR 21 2021

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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Total Postage United States Environmental Protection

Agency, Region 4 Administrator

61 Forsyth Street SW

City, State, ZIP Atlanta, GA 30303

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United States Environmental Protection
Agency, Region 4 Administrator
61 Forsyth Street SW
Atlanta, GA 30303



9590 9402 6036 0069 1037 78

2. Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X
☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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 Secretary
 217 West Jones Street
 Raleigh, NC 27603

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 Asheville Regional Office
 North Carolina Department of Environmental Quality
 2090 U.S. 70 Highway
 Swannanoa, NC 28778-8211

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 Secretary
 217 West Jones Street
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COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *B.R. Morris-McLachlan* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
 Bridgette R. Morris-McLachlan

C. Date of Delivery
 4/22/21

D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
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☐ Collect on Delivery Restricted Delivery

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COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *Sara Helms* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
 Sara Helms

C. Date of Delivery
 4/16/21

D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

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☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____

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PS Form 3800, April 2015 PSN 7530-02-000-9047 **See Reverse for Instructions**

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1. Article Addressed to:

Tony Elders
Director, Office of Permitting and Code
Enforcement of Jackson County
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Sylva, NC 28779

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A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) MSHCICIG

C. Date of Delivery 4/16/21

D. Is delivery address different from item 1? ☐ Yes ☒ No
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<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Mail Restricted Delivery (00)	

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